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May 28, 2003

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Re: Written *Ex Parte*
MB Docket No. 02-277 and MM Docket Nos. 01-235, 01-317 and 00-244
2002 Biennial Regulatory Review of the Commission's Broadcast Ownership
Rules and Other Rules

Dear Ms. Dortch:

Please find attached the written *ex parte* filing of Cox Enterprises, Inc., discussing the evidence in the public record in the above-captioned proceeding. Should there be any questions regarding this filing or its subject matter, please contact Mr. Alexander Netchvolodoff, Senior Vice President of Public Policy, Cox Enterprises, Inc., at (202) 296-4933.

Pursuant to Section 1.1206(b) of the Commission's rules and the Commission's *Notice of Proposed Rulemaking* in this proceeding, an original and one copy of this letter and enclosure are being submitted to the Secretary's office for the above-captioned docket, and copies also are being provided to Ms. Mania Baghdadi, Ms. Linda Senecal, and Qualex International.

Respectfully submitted,



To-Quyen Truong

cc: Mania Baghdadi
Linda Senecal
Qualex International (2 copies)

Alexander Netchvolodoff
Alexandra Wilson
Cox Enterprises, Inc.

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List ABOVE



1225 Nineteenth Street, N.W., Suite 450 Washington, D.C. 20036 (202) 296-4933

Alexander V. Netchvolodoff
Senior Vice President of Public Policy

May 28, 2003

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Powell:

In its pleadings in the media ownership proceeding, Cox Enterprises, Inc. ("Cox") has urged the Commission, among other things, to retain the 35 percent national television ownership cap. This position is grounded in the many experiences that Cox has had with the major television networks over the years as a long-standing operator of both local television stations and local cable systems. As detailed in the record, Cox's real-life business transactions (and those of similarly situated companies) with the television networks clearly establish that, as the networks have acquired extensive interests in other media and expanded their television station footprint from 25 to 35 percent, they increasingly have engaged in behavior that impedes the ability of local media outlets to serve their local communities, and imposes the distribution of untested cable networks on American consumers at inflated rates.

To Cox's bemusement, the networks on May 2, 2003 submitted a listing of Cox's local media holdings.¹ This filing proves the point made in the opening pages of Cox's opening comments: "Cox's commitment to localism is at the very core of its business philosophy. . . . Despite the scope of its various media holdings, Cox is a local media company operating local businesses with local management empowered to make decisions at the local level."² As even a cursory review of the networks' exhibit reveals, Cox's operations are local.³ And this focus on localism contrasts starkly with the national focus of the national television networks.

¹ See Appendix B to Letter of John C. Quale, Counsel for the Joint Network Commenters, to Marlene Dortch, Secretary, Federal Communications Commission, submitted on May 2, 2003 in MB Docket No. 02-277.

² *Comments of Cox Enterprises, Inc. ("Cox Comments")* at 3-4.

³ Using the Joint Networks' own data, Cox operates a minimum of 374 local businesses, including 15 local TV stations, 81 local radio stations, 243 local cable systems, 9 local newspapers and more than 26 local Internet websites. Notably, the Joint Networks' listing is not complete; for example, Cox in fact operates 17 daily newspapers (not 9) and 26 weekly newspapers. The Joint Networks also incorrectly assert that Cox holds ownership interests in a variety of different cable channels. Cox Communications, Inc. holds a passive, purely financial 24.9% interest in Discovery Communications; it does not have the other cable channel ownership interests listed on page 6 of Joint Networks' Appendix B.

Yet Cox's ability to respond to local market forces and serve its local communities has affirmatively been harmed by the networks' burgeoning vertical integration and horizontal concentration. The facts of evidence in this proceeding and in the related petition submitted by the Network Affiliated Stations Alliance ("NASA Petition") raise serious questions about network practices that impinge unduly on the principles of licensee discretion and localism, both of which are embedded in the Communications Act. The record is replete with documented examples of troubling network behavior, including:

- increased pressure by networks on independently-owned affiliates to avoid preemptions,
- declining affiliate preemptions,
- greater network encroachment on affiliate programming discretion,
- reduced sensitivity on the part of the networks to local community standards as reflected in affiliates' views,⁴
- stringent and declining affiliate preemption baskets,
- network reservation of station time for future network use,
- provisions in network affiliation agreements that give the networks the right to block the assignment of an affiliation agreement to a wholly qualified buyer of the station in question,
- the possibility that affiliation agreement provisions could be used to force a station sale to the network,
- network claims on affiliates' digital capacity, and
- network misuse of retransmission consent negotiations to launch untested, affiliated cable networks at inflated rates.

The networks' national program services are a highly valuable component of the service that local television stations and cable systems provide to their communities. The system of broadcasting established by Congress, however, requires that the national networks must not be permitted to ride roughshod over local programming responsibility. The tension between the television networks, on the one hand, and local stations and cable operators, on the other, serves consumers' interests and must be maintained in reasonable equilibrium if local audience needs are to be met.

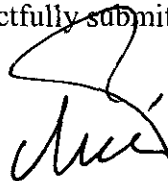
In specifying the 35 percent national cap in the 1996 Act, Congress expressed its concern that expanded network ownership of local stations and other industry developments could jeopardize this balance and threaten the ability of local media outlets to serve local

⁴ The record evidence that network owned and operated stations do not preempt network programming to protect local community standards is un rebutted.

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Chairman Michael K. Powell
May 28, 2003

communities.⁵ For all of the reasons described in its pleadings, Cox shares that concern. Cox accordingly urges the Commission to recognize explicitly in its upcoming media ownership order the adverse impact on localism, and thus the public interest, that many of the networks' business practices already have had to date. These practices should not be permitted to continue or, even worse, accelerate – a highly likely outcome should the national cap be relaxed even further. And, to further protect against network abuses, Cox also urges the Commission to speedily address the serious, and related, examples of network overreaching described in the NASA Petition and associated pleadings. Prompt and unequivocal Commission action in these two proceedings condemning inappropriate encroachment by the networks on the ability of local media outlets to serve their local communities is essential to preserve the Congressionally-mandated goal of localism.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Alex Netchvolodoff', written over the typed name.

Alexander V. Netchvolodoff

cc: Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Commissioner Jonathan S. Adelstein
Kenneth Ferree, Esq.
Paul Gallant, Esq.

⁵ See *Cox Comments* at 12.